

ESTTA Tracking number: **ESTTA577203**

Filing date: **12/17/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053298
Party	Defendant Kimberly Kearney
Correspondence Address	KIMBERLY KEARNEY HOLLYWOOD SOUTH LLC 17216 SATICOY STREET, SUITE 235 VAN NUYS, CA 91406 UNITED STATES kimk@hollywoodsouthproductions.com,production@hollywoodsouthproductions.com
Submission	Opposition/Response to Motion
Filer's Name	Kelly J . Adams
Filer's e-mail	kadamslaw@yahoo.com
Signature	/Kelly J. Adams/
Date	12/17/2013
Attachments	Motion for Reconsideration.pdf(86674 bytes )

In the matter of Trademark Registration No. 3,748,123  
Mark: WHAT WOULD JESUS DO  
Registration date: February 16, 2010

Respondent,

.....

Cancellation No. 92053298

October 4, 2013, the Respondent, then pro se, Kimberly Kearney, filed a motion for extension of the testimony period. Ms. Kearney claimed that despite her relentless efforts to understand and abide by the Federal Rules, she was still unsuccessful in her attempts to subpoena all of her witnesses. On November 18, 2013 the Board denied this request for an extension of time, stating that pursuant to Fed. R. Civ. P. 6 (b)(1)(A) and Trademark Rule 2.117(c), Ms. Kearney's reason for needing more time was not justified under "good cause". Indeed it is understood and respected that Ms. Kearney had a

responsibility as a pro se litigant to familiarize and understand the Federal Rules of this serious matter. Consequently, we understand and respect the board's decision. However, it is clear from the beginning of this trial, Ms. Kearny, as a pro se litigant, has tried her best to defend herself and this trademark. This is even more evident in her recent support of the motion to extend time submitted on November 4, 2013. In this motion she attached documentary evidence that was only to be submitted during the testimony period in the form of a Notice of Reliance. We now ask that the Board reconsider the motion submitted by Ms. Kearney October 4, 2013 that will allow for the reopening of the testimonial period but only for a limited time and only to submit a Notice of Reliance and accurately present documentary evidence already seen by all parties.

**ALLOWING MS KEARNEY TO PROFFER DOCUMENTARY EVIDENCE  
CONSTITUTES GOOD CAUSE**

“A motion to extend should include a recitation of specific facts constituting good cause for the extension sought”. See *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1758 (TTAB 1999). *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d (TTAB 1999). Evidence proffered and used to support its case must be submitted via a Notice of Reliance during the testimony period. See TMBP § 704.02.

In this case, Ms. Kearny is simply requesting to reopen the testimony period so that she may submit her documentary evidence in the official form of a Notice of Reliance. Ms. Kearny has already improperly submitted this evidence beginning with her motion on August 12, 2013. This evidence, though not accurately presented, was

submitted during the time that her testimony period was still open. In her attempt to learn how to perform depositions and acquire subpoenas, she requested extensions of time because she was unsuccessful in her attempts. She was not, however, unsuccessful in gathering her documentary evidence to support her case, only improper in how she submitted it. Allowing Ms. Kearny to submit this evidence that is already attached to several motions constitutes good cause as we are only requesting the Board to open the testimony period in order to submit a Notice of Reliance and for no other cause. If Ms. Kearny is not able to properly submit this evidence it will be an extreme injustice to her as this is the only evidence she has to support and defend herself in this case.

## CONCLUSION

In conclusion, we respectfully request the board to reconsider the motion to extend the testimony period for 10 days and allow Ms. Kearney to only submit a Notice of Reliance so she may properly present the evidence already presented improperly through motions.

RESPECTFULLY SUBMITTED this 17 day of December, 2013.

\_\_\_\_\_/s/\_\_\_\_\_  
Kelly Adams  
1528 Walnut Street, Suite 1401  
Philadelphia, PA 19102  
(610) 306 - 7206  
Pro Bono - Attorney for the Respondent